



PRESS RELEASE

Attorney General Frosh Joins Bipartisan Coalition Urging Supreme Court to Preserve States' Ability to Sue Pharmaceutical Manufacturers that Mislead Consumers

BALTIMORE, MD (November 21, 2018) – Maryland Attorney General Brian E. Frosh today joined a bipartisan group of 23 attorneys general in urging the Supreme Court to uphold states' ability to sue pharmaceutical manufacturers when they mislead consumers about the potential side effects of their products. In an [amicus brief](#) filed today in the United States Supreme Court, Attorney General Frosh and his counterparts argue that Merck, a pharmaceutical company, can be held liable under state law for misleading and misrepresenting the side effects of their drug Fosamax®.

“When patients suffer medical consequences as a result of a pharmaceutical company's failure to warn patients of certain risks, the company should be held responsible,” said Attorney General Frosh. “States have the right to protect their residents and demand accountability from pharmaceutical manufacturers, especially when consumers are harmed by their actions, or in this case, inaction.”

The coalition's amicus brief in *Merck Sharp & Dohme Corp. v. Albrecht*, No. 17-290, argues that if the Court sides with Merck, it will hinder states' ability to take legal action against a pharmaceutical manufacturer for misleading and misrepresenting its products. Additionally, the attorneys general argue that Merck may be held liable under state law even if it is not liable under federal law.

After suffering from a specific type of fracture, hundreds of Fosamax® users filed personal injury lawsuits against Merck, alleging that it did not warn consumers about the risk of these specific fractures. Merck claims that because the FDA did not approve a warning label for a different type of fracture, it is not liable under state law.

The brief argues that:

- The Constitution gives the states or the people all powers that are not specifically delegated to the federal government.
- States have long regulated drug labeling; the duty to warn both physicians and patients about emerging safety risks predates the beginning of federal drug regulations, and this must be upheld by the Court.
- Merck's argument would break precedent in the balance between state and federal regulations, especially regarding consumer protection.

Today's amicus brief is led by Virginia Attorney General Mark R. Herring, and in addition to Maryland is joined by the Attorneys General of California, Connecticut, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia.